

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
INDUSTRIAL POWER GENERATING CORPORATION
d/b/a INGENCO
Registration No. 31047**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Industrial Power Generating Corporation d/b/A INGENCO for the purpose of resolving certain violations of environmental laws and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.

6. “INGENCO” means Industrial Power Generating Corporation, d/b/a INGENCO, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the INGENCO, site located at Maplewood Recycling & Waste Disposal Facility in Amelia County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means the Stationary Source Permit to Construct and Operate, which became effective May 4, 2001 and amended December 14, 2001.
10. “MODEF” means Mineral Oil Dielectric Fluid.

SECTION C: Findings of Fact and Conclusions of Law

1. INGENCO owns and operates a power generating facility in Amelia, Virginia. This facility is the subject of the Permit.
2. On May 4, 2001 INGENCO was issued a permit to construct and operate a dual fuel electrical generating facility in Amelia, Virginia.
3. In a letter dated August 28, 2001, INGENCO notified the Piedmont Regional Office that the facility achieved start-up using Distillate oil, MODEF, or Number 4 distillate oil on August 24, 2001.
4. Condition 23, of INGENCO’s Permit, requires Initial Performance Tests to be conducted for nitrogen oxides, carbon monoxide, and non-methane organic compounds (NMOC) from the engines (E1-E36) to determine compliance with the emission limits contained in the Permit condition numbers 15, 16 and 17. The Permit specified that “separate tests shall be made while operating on oil (100% distillate oil, MODEF, or number 4 distillate oil), and on landfill gas (with the minimum pilot charge of distillate oil, MODEF, or number 4 distillate oil). The test shall be made within the normal operating range of the engines. Inlet charge temperature shall be maintained between 120° F and 130° F during all tests. The tests shall be performed, and reported and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility.”
5. The August 28, 2001, start-up notification letter indicated that the testing should have been completed no later than February 24, 2002.
6. On June 18, 2002, PRO received the test protocol for the Initial Performance Test.

7. On July 10, 2002, INGENCO notified PRO in writing as of January 2002 that the facility had achieved full production using landfill gas.
8. The Permit required initial compliance testing within 60 days after achieving full production using landfill gas. Testing should have been completed no later than April 1, 2002.
9. On July 3, 2002, a Notice of Violation was issued for the above violation.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders INGENCO, and INGENCO voluntarily agrees, to pay a civil charge of four thousand nine hundred dollars (\$4,900.00) within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number of the facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INGENCO, for good cause shown by INGENCO, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to INGENCO by DEQ on July 3, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, INGENCO admits the jurisdictional allegations, and neither admits or denies the factual findings and conclusions of law contained herein.

4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INGENCO declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. INGENCO shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO, shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and INGENCO . Notwithstanding the foregoing, INGENCO agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to INGENCO. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO, from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____.

Robert G. Burnley, Director
Department of Environmental Quality

INGENCO voluntarily agrees to the issuance of this Order.

By: _____
Charles J. Packard, President

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2003, by _____, who is
(name)
_____ of INGENCO, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____